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OGC 78-6968

18 October 1978

78-1847

Executive Registry

78-3131

OLC #78-3257

MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
SUBJECT: Reporting Activities of Questionable
Legality or Propriety to the SSCI and HPSCI
REFERENCE: Letter to you from the President, dated
19 September 1978

1. Action Requested: Your review and approval of the attached proposed letter to Bob Lipshutz.
2. Background: A few days ago at the morning staff conference you referred to a recent letter from the President, copy attached at Tab A, prescribing the manner in which Agency activities of questionable legality or propriety are to be reported to "the appropriate congressional committees." You expressed some concern about this letter and asked me for a memorandum setting forth my views.
3. The President's letter implements Section 3-403 of Executive Order 12036, which provides in relevant part that:

Under such procedures as the President may establish and consistent with applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods, the Director of Central Intelligence and heads of departments and agencies of the United States involved in intelligence activities shall:

* * * *

Report in a timely fashion to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

MORI/CDF

4. It is clear that the President looked principally to the IOB for advice as to the implementation of Section 3-403, and there is no doubt that the President's letter in fact was drafted by the Board. I know that because the letter is very nearly identical to a draft that Burt Wides sent me for comment last April. The earlier draft, together with Burt's note to me dated 4 April, are attached at Tab B. The comments I sent back are attached at Tab C.

5. The September letter differs from the April draft only in that (a) the last two paragraphs have been added, and (b) the first paragraph does not indicate that similar letters were sent to other heads of intelligence agencies. I assume that the letter change is merely stylistic and that in fact such other letters were sent.

6. At this juncture I doubt there is anything to be gained by taking an appeal. The two new last paragraphs go some distance towards meeting the objections I raised to the April draft. For the rest, I think we can live with these procedures. Whether the SSCI and HPSCI can live with them, however, is another question, and it is one that takes on extra importance in light of the commitments that you made during your confirmation hearings (see page 39 of the hearing transcript, copy attached at Tab D). As I see it, even apart from your commitments, the oversight committees would be plainly entitled to know what reporting procedures have been established by the President. Under the circumstances, given that the established procedures do not coincide in all respects with your commitments, the case favoring disclosure to the committees is that much more compelling. I would therefore favor a note to Lipshutz asking clearance to make copies of the President's letter available to the SSCI and HPSCI.

7. Recommendation: That you sign the attached letter to Lipshutz.

[Redacted Signature Box]

Anthony A. Lapham

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Attachments

OGC:AAL:sin

1 - DDCI

1 - ER via Ex Secty

1 - IG

1 - OLC

1 - OGC